IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

CRL.A.No. 324 of 2003(C)

CC.1180/1999 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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APPELLANT: COMPLAINANT

P.A.CHANDRAN, MANAGER,
DHANALAKSHMI ENTERPRISES, ALUVA.

BY ADV. SRI.K.A.JALEEL

RESPONDENTS: ACCUSED & STATE

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1. M.N.SURENDRAN, S/O. NARAYANAN,
MUKKALATHU HOUSE, POOKKATTUPADY,
PIN 683 561.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV. SRI. THOMAS JOHN AMBOOKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. BALANCHANDRAN, J.

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CRL.A. No. 324 OF 2003-C

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Dated this the 1st day of February, 2007

J U D G M E N T

The complainant in a complaint filed under Section 138 of the Negotiable Instruments Act against the 1st respondent is the appellant, being aggrieved by the acquittal of the 1st respondent by the court below under Section 255 (1) of the Cr.P.C. Exhibit.P2 is the cheque dishonour of which has given rise to the complaint filed by the appellant in the court below. The cheque is one issued in favour of Dhanalakshmi Enterprises by the 1st respondent. The complaint has been filed by one Sri.P.A.Chandran describing himself as Manager of M/s.Dhanalakshmi Enterprises, Aluva and not by Dhanalakshmi Enterprises represented by Manager Sri.P.A.Chandran. The court below acquitted the accused-1st respondent finding that the complaint filed by the appellant

Sri.P.A.Chandran as complainant is not maintainable. He also relied on the decision of the Madras High Court in **Sudesh Kumar Sharma Vs. Selvamani** (1995 (1) KLT S.H. 19) and the decision of this court in **Hamsa Vs. Ibrahim** (1993 (2) KLT 698) in support of the view taken by him that the complaint can be filed only by the payee or holder in-due-course and the complaint cannot be filed by Manager unless he is a Power of Attorney Holder of the payee firm.

2. It is contended before me by the learned counsel for the appellant relying on the decision of the Apex Court in **MMTC Ltd Vs. Medchl Chemical and Pharma (P) Ltd** (2001 (2) KLJ 985) that the absence of a complaint by a duly designated authority is only an irregularity, which can be cured subsequently by the complainant-company and that therefore, the acquittal of the 1st respondent by the court below was improper and judgment of acquittal deserves to be reversed. The argument, no doubt, would have been tenable had the complainant in the case being the payee under the cheque. In MMTC's case cited supra, the complaint was filed by the payee company, though the person who represented the company, was contended to be not a

person having designated authority. It was in that context that the Apex Court held that the defects could be cured at a subsequent stage by the company by sending a person who is competent to represent the company.

3. In the instant case, the complainant is-Sri.P.A.Chandran, whose status is further qualified by stating that he is the Manager of the payee firm. It is also worthy to note that even in MMTC's case, the Apex Court only held that the Company can cure the defect in representation at a "later stage". "Later stage" obviously means stage prior to the disposal of the case by the trial court. In the instant case, even assuming that the payee firm could cure the defects at a later stage, it was not done till the matter was disposed of by the trial court or even before this court. The appellant is not the payee firm but the complainant-P.A.Chandran himself qualified by describing him as Manager of Dhanalakshmi Enterprises, Aluva.

4. In the circumstances, the view taken by the court below that only the payee or the holder in due course could maintain the complaint under Section 138 of the Negotiable Instruments Act as against the 1st respondent has only to be

upheld. The result is that the acquittal of the 1st respondent by the court below has to be confirmed and this appeal dismissed.

In result, confirming the acquittal of the 1st respondent of offence under Section 138 of the Negotiable Instruments Act vide judgment impugned, I dismiss this Criminal Appeal.

(K.P. BALACHANDRAN, JUDGE)

mma/

KURIAN JOSEPH, J.

OP No.

JUDGMENT

13th March, 2006